



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



March 17, 2003

Torromeo Trucking Company, Inc.
Attn: Vincent Iacozzi
33 Old Ferry Road
Methuen, MA 01844

NOTICE OF DECISION
ADMINISTRATIVE FINE
NO. AF 02-014 (SITE SPECIFIC;
WETLANDS)

Re: Mason's Crossing Subdivision. Fremont, NH

Dear Mr. Iacozzi :

As you are aware, by Notice of Proposed Administrative Fine No. AF 02-014 issued March 27, 2002, the Water Division sought administrative fines totaling \$12,500 against Torromeo Trucking Company, Inc. ("Torromeo") for alleged violations of RSA 485-A, the state water pollution control statute, and RSA 482-A, the state wetlands statute, for work on property located off North Road, Fremont, NH ("the Property"). Pursuant to RSA 485-A:22, V and RSA 482-A:13, and based on my review of the evidence presented at the hearing held on this matter on January 27, 2003, I have concluded that a fine of \$12,500 is appropriate as set forth below:

- ▶ A fine in the amount of \$1,500 is imposed against Torromeo for significantly altering terrain without a permit from DES.
- ▶ A fine in the amount of \$3,000 is imposed against Torromeo for failing to install or maintain erosion control measures on Karlin Road between stations 10+00 and 11+00, adjacent to the culvert at station 34+00 and between stations 44+00 and 47+00.
- ▶ A fine in the amount of \$1,000 is imposed against Torromeo for failing to stabilize exposed soils.
- ▶ A fine in the amount of \$6,000 is imposed against Torromeo for failing to construct proper headwalls on three culverts on the Property.
- ▶ A fine in the amount of \$500 is imposed against Torromeo for placing fill in wetlands without a permit from DES.
- ▶ A fine in the amount of \$500 is imposed against Torromeo for placing less than 3,000 square feet of fill in wetlands without a permit from DES.
- ▶ The \$12,500 fine shall be paid within 30 days of the date of the decision or at the election of Torromeo in two equal payments of \$ 6,250 each in accordance with the following schedule:

First payment due: April 16, 2003

Second payment due: May 16, 2003

Fine payments shall be by check or money order payable to "Treasurer-State of NH" and sent to the attention of the Legal Unit, DES/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

New Hampshire's rivers, streams, ponds, and lakes provide valuable recreational, health, and economic benefits. Under RSA 485-A, DES issues site specific permits which are designed to protect the state's surface water quality by regulating soil erosion and controlling sediment-laden runoff that may occur, for example, during construction activities. It is important to control erosion because the resulting runoff may flow into surface waters and degrade the habitat for aquatic plants and animals or adversely affect public drinking water supplies.

New Hampshire's wetlands are regulated under RSA 482-A. The purpose of this statute is to protect wetlands from despoliation because the state recognizes that these areas are a valuable resource that provide wildlife habitats, storm water retention, water supplies, and nutrient and pollutant filtering.

Torromeo violated RSA 485-A by significantly altering terrain without a permit from DES and by failing to install or maintain erosion control and failing to stabilize exposed soils on the Property. Torromeo violated RSA 482-A by placing fill in wetlands on the Property without a permit from DES. These unauthorized activities can adversely affect water quality and plant and animal life in wetlands and surface waters of the state.

This decision is based on the following findings and conclusions:

1. Torromeo Trucking Company, Inc. ("Torromeo") owns the land located off North Road, Fremont, NH, and more particularly described on the Fremont tax maps as Map 6, Lot 62 ("the Property").
2. RSA 485-A:17 requires "any person proposing to dredge, excavate, place fill, mine, transport forest products or undertake construction in or on the border of the surface waters of the state, and any person proposing to significantly alter the characteristics of the terrain, in such a manner as to impede the natural runoff or create an unnatural runoff" to obtain a permit from DES.
3. RSA 482-A:3, I states that "[n]o person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
4. Env-Ws 415.02(y) defines "to significantly alter the characteristics of terrain" to include disturbing more than 100,000 square feet of contiguous area.
5. Env-Ws 415.09(i) and (k) require temporary and permanent methods for preventing soil erosion and controlling runoff to be employed during earth moving activities.
6. Env-Ws 415.09(j) requires construction phasing and sequencing be implemented during earth moving activities, including methods for limiting the length of time unstabilized soils are exposed.
7. On May 3, 1996, DES issued Site Specific Permit WPF-4594 ("the Site Specific Permit") to the previous owner of the Property, Harold Sherman, to develop a 97-acre parcel into a 27-lot residential subdivision know as Mason's Corner Subdivision.
8. On January 3, 1997, DES issued wetlands permit number 1996-0220 ("the Wetlands Permit") to Sherman for roadway crossings and one driveway crossing for the Property.
9. On May 3, 1998, the Site Specific Permit expired.

10. On January 3, 1999, the Wetlands Permit expired.
11. The Wetlands Permit had not been transferred to Torromeo.
12. On November 7, 2000, DES inspected the Property. Staff observed culverts not constructed with proper headwalls at stations 13+00, 32+00, and 47+00 on Karlin Road, unstable slopes at stations 10+00 and 11+00, inappropriate erosion control measures, unstabilized slopes and swales, and fill in culverts and wetlands.
13. On December 11, 2000, DES issued Letter of Deficiency WD WQE 00-21 ("the LOD") to Henry Torromeo.
14. On May 10, 2001, DES inspected the Property and discovered that Torromeo had not complied with the LOD except for removing a stockpile of material from Round Robin Loop.
15. On November 14, 2001, DES inspected the Property and observed that slopes continued to be poorly stabilized and there were gullies and other unstabilized areas.
16. On March 12, 2002, DES issued Administrative Order No. WD 02-10 ("the Order").
17. On August 5, 2002, DES inspected the Property and found that Torromeo still had not complied with the Order.
18. Torromeo violated RSA 485-A:17 and Env-Ws 415.09(i) by failing to install or maintain erosion control measures on Karlin Road between stations 10+00 and 11+00, adjacent to the culvert at station 34+00, and between stations 44+00 and 47+00.
19. For a violation of RSA 485-A:17 and Env-Ws 415.09(i), Env-C 603.02(i)(1) authorizes a fine of \$3,000.
20. Torromeo violated RSA 485-A:17 and Env-Ws 415.09(j) by failing to stabilize exposed soils.
21. For a violation of RSA 485-A:17 and Env-Ws 415.09(j), Env-C 603.02(i)(1) authorizes a fine of \$1,000.
22. Torromeo violated RSA 482-A:3, I by failing to construct proper headwalls on three culverts on the Property.
23. For a violation of RSA 482-A:3, I, Env-C 614.05(m) authorizes a fine of \$6,000.
24. Torromeo violated RSA 482-A:3, I by placing fill in wetlands without a permit from DES.
25. For a violation of RSA 482-A:3, I, Env-C 614.02(b)(1) authorizes a fine of \$500.
26. Torromeo violated RSA 482-A:3, I by placing less than 3,000 square feet of fill in wetlands without a permit from DES.
27. For a violation of RSA 482-A:3, I, Env-C 614.02(b)(1) specifies a fine of \$500.

28. Torromeo violated RSA 485-A:17 by significantly altering terrain without a permit from DES.
29. In the Notice of Proposed Fine, the Division incorrectly cited Env-C 603.02(i)(1) as authorizing a fine for a violation of RSA 485-A:17 by significantly altering terrain without a permit. The violation is clearly covered by Env-C 603.02(a)(1) which specifies a fine of \$1,500.
30. None of the factors identified in 9Env-C 601.06(c)(1) through (4) apply to reduce the amount of fine that can be imposed for the violation noted in #18, 20, 22, 24, 26, and 28 above.
31. The following ruling is made on the Division's proposed findings of fact and rulings of law:
 - a. Findings and rulings 1 - 19 are granted.

Torromeo violated RSA 485-A by significantly altering terrain without a permit from DES and by failing to install or maintain erosion control and failing to stabilize exposed soils on the Property. Torromeo violated RSA 482-A by placing fill in wetlands without a permit from DES. Thus, for the reasons discussed above, I have concluded that the \$12,500 fine imposed against Torromeo is appropriate.

Any party aggrieved by this decision may file a motion for reconsideration within 30 days of the date of this decision, in accordance with NH RSA 541 and Env-C 206.

Very truly yours,

COPY

Robert Monaco
Acting Commissioner

cc: Rockingham County Registry of Deeds
Fremont Planning Board
Fremont Conservation Commission
Harry T. Stewart, P.E., Director, WD
Ana Ford, DES Site Specific
Mary Ann Tilton, DES Wetlands
Mark Harbaugh, DES Legal Unit
Susan Weiss Alexant, DES Hearings and Rules Attorney

PART Env-C 206 MOTIONS FOR RECONSIDERATION

Env-C 206.01 Purpose. The rules in this part are intended to supplement any statutory provisions, such as RSA 541, which require or allow a person to request reconsideration of a decision of the department prior to appealing the decision. These rules do not create the right to request reconsideration of a decision where it does not otherwise exist under law.

Source. #6960, eff 3-25-99

Env-C 206.02 Applicability. The rules in this part shall apply whenever any person has a right under applicable law to request a reconsideration of a decision prior to filing an appeal of the decision with the applicable court or council having appellate jurisdiction.

Source. #6960, eff 3-25-99

Env-C 206.03 Time for Filing. As specified in RSA 541:3, any motion for reconsideration shall be filed no later than 30 days after the date the decision that is the subject of the motion was issued.

Source. #6960, eff 3-25-99

Env-C 206.04 Filing.

(a) Any person wishing to request reconsideration of a decision of the commissioner shall file the original and 2 copies of a motion for reconsideration at the following address:

Office of the Commissioner, Enforcement Unit

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(b) Any person wishing to request reconsideration of a decision of a division relating to a matter for which the commissioner has delegated the decision-making authority to the division shall file the original and 2 copies of a motion for reconsideration with the director of the division at the following address:

Department of Environmental Services

6 Hazen Drive

Concord, NH 03301

(c) For purposes of this section, a "decision of the commissioner" means a decision that is signed by the commissioner, or by the assistant commissioner on behalf of the commissioner, either alone or in conjunction with a division director, such as an administrative order.

(d) For purposes of this section, a "decision of a division" means a decision that is signed by a division director or other authorized division staff, but not signed by the commissioner or by the assistant commissioner on behalf of the commissioner, such as a decision to issue or deny a permit.

Source. #6960, eff 3-25-99

Env-C 206.05 Format and Content of Motion. The person filing a motion for reconsideration shall provide the following information:

- (a) The exact legal name of each person moving for reconsideration and the residence address or principal place of business of the person;
- (b) A clear and concise statement of the reason(s) why the person believes the decision to be in error;
- (c) A concise and explicit statement of the facts upon which the department is expected to rely in granting relief;
- (d) A clear and concise statement of the specific relief or ruling requested;
- (e) A copy of the decision which is the subject of the motion; and
- (f) Such other information as the party filing the motion deems pertinent and relevant, including sworn written testimony and other evidence that was not available for the hearing.

Source. #6960, eff 3-25-99